88-1964

NO.

FILED
MAY 15 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER Term, 1988

EARLENE POLYAK — Petitioner

vs

JIM HAMILTON, JUDGE
CHANCERY AND CIRCUIT COURTS
OF LAWRENCE COUNTY — Respondent

PETITION FOR WRIT OF CERTIORARI
FROM THE SUPREME COURT OF TENNESSEE

EARLENE POLYAK
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3064

QUESTIONS PRESENTED

1.Does non-resident property owner have the right to equal protection of partition of property provided in Tennessee Statute Parition in Kind 29-27-117, and is the denial of right to be heard by the Supreme Court of Tennessee render statute on which she relies invalid an repugnent to the constitution?

2. Does the sale of property without jury trial or any appeal ever being heard conflict with the Seventh Amendment?

3.Does the sale of property without jury trial or appeal conflict with 42 U.S.C.1981, "equal benefit of all laws;" " 1982,"right to inherit and hold" and 1983 color of usuage of State Judgedenial of due process, and deprivation of laws and property rights?

4. Should Supreme Court hear Petitioner's application for State Judge to rescue?

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

EARLENE POLYAK — Petitioner

vs

CHANCERY AND CIRCUIT COURTS OF LAWRENCE COUNTY — Respondents

PETITION FOR WRIT OF CERTIORARI
FROM THE SUPREME COURT OF TENNESSEE

Petitioner prays that a writ of certiorari issue from this Court to review the question of the sale of the right to her property on her "interest therein" without jury trial, or appeal ever being heard, rendering Tennessee Statute 29-27-117 Partition in Kind, on which she relies invalid and repugnent to the constitution of the United States.

Companion Cases: Chancery No. 1974, Frank Hulen and Wilma Lesnansky v Earlene Polyak,and Circuit No. Buford Evans & Sons v Earlene Polyak.

OPINIONS BELOW

The opinions of the Supreme Court are set forth in Appendix A, and the opinions of the Court of Appeals are set forth in the Appendix B. The opinions of companion cases are set forth in Appendix C.

JURISDICTION

The order of the Supreme Court, Middle Division of Tennessee was entered on February 15, 1989 and this petition for writ of certiorari is filed within ninety(90) days thereof.

The jurisdiction of this Court is invoked in the constitution Article III, Sec.2, which states that the judicial power shall e 'end to all cases of law and equity, between a state and citizens of another state; between citizens of different states.

The jurisdiction is invoked in federal laws:42 U S C. Secs. 1981, 1982, 1983;28 U.S.C. 1443(1)(2);42 U.S.C.A. amended 42 U.S.C.A. 1965

and the fifth, Seventh, and Fourteenth Amendments.

The federal and constitutional questions were timely raised in this case.

CONSTITUTIONAL PROVISIONS

The pertinent portion of the Fifth Amendment provided as follows:

> No...person shal be deprived of life, liberty; or property; without due process of law; nor sall private property be taken for public use without just compensation.

U.U. Const. Amend. V Cl 3 & 4.

The pertinent portion of the Sevendth Amendment provides as follows:

> ...where the value in controversy shall exceed twenty dollars, the right of jury trial shall be preserved.

U.S. Const. Amend. VII.

The pertinent portion of the Eight Amendment provides as follows:

> ...nor excessive fines imposed, nor cruel unusual punishment inflicted.

U.S. Const.Amend.VIII.

The pertnent portion of the Fourteenth Amendment provides as follows:

No state shall make or enforce any law which shall abridge the priveleges or immunities of citizens of the United States;Nor shall any state deprive any person of life, liberty, or property with out due process of law, nor deny any person equal ithin its juridiction the equal protection of the laws.
U.S. Const. XIV.

28 U.S.C. 1443:

(1) Against any person who is denied or cannot enforce in the Courts of such state a law providing equal civil rights of of citizens of the United States or of all persons within its jurisdiction.
(2) For any act under color of authority derived from an law providing for equal rights...

42 U.S.C:

Sec. 1981: All persons within the jurisdiction of the United States shall have the same right in every state to enforce contracts, to sue... to the full and equal benefit of all laws.

Sec; 1982:... to inherit hold, purchase lease and convey real and personal property.

Sec 1983: Every person...who under the color of any... custom or usuage of any state.. subject or caused to be subjected any citizen of the United States or other person within its jurisdiction ...deprivation of rights and priveleges...secured secured by the constitutiona and laws, shall be liable to the party injured in action at law in equity or proceeding....

28 U.S.C.
In any action...where the constituti

onality of the statute of state affecting public interest is drawnto question.

28 U.S.1257(3):

> ...where the validity of a state statute is drawn in question on ground of its being repugnent to the constitution... or where any title right privelege or immunity is specially set up or claimed under the constitution....

STATEMENT OF THE CASE

Petitioner seeks relief in review in writ of certiorari of denial of equal protection of constitutional right in the sale of her property by state judge on her "interest therein" protected by State Statute Partition in Kind 29-27-117, without jury trial or appeal ever being heard by Supreme Court of Tennessee, and the question of this statute on which she relies being invalid and repugnent to the constitution of the United States.

Petitioner believes that she has been denied equal protection of state statute as non-resident and denied due process and deprived of civil and constitutional laws and property

rights. This property is located twenty-five miles south, and high potential for development area of the new General Motors"Saturn Plant" Spring Hill, Tennessee. General Motors is sending seven hundred(700) new workers from Detroit, Michigan

Petitioner has restored and maintained for thirteen (13) years, the property on her agreed partition at her own expense for retirement home. She is sole owner of additional forty (40) acres threatened by invalid leins after she appeared in state courts and made good and sure bond for appeals(App. C p. 37-41).

The appeal bond in 1974, Frank Hulen and Wilma Lesnansky v Earlene Polyak is made with one thousand($1000.00)dollars on idle property, but Petitioner has possession of her agreed partition. She secured second appeal Buford Evans & Sons v Earlene Polyak 10647 with two times alleged amount owed Mr. Evans & Sons Real Estate Auctioneers.

On August 21, 1987, Robert Boston, son of

William Boston, Boston Bates & Holt, who divided loyalties after seven years of representing the family after hasty hearing granted first order sale, submitted second order on his invalid lein for sale of her "interest therin" to the same state judge on August 21, 1987(App. C p.30).

Petitioner learned through casual conversation that property 1974 was advertised in local newspaper "Advocate" for sale for her "interest therin" including travel trailer in her yard. This party only saw add one time and according to statute property must be advertised for four weeks, and she makes affidavit Affiant places add about November 1987(App. A p. 9).

On August 24, 1987, within 3 days,Evans placed second lein, and Robert Boston has two leins, one of undisclosed amount.Leins for same alleged debts secured by bonds.Clerk stated leins on all Petitioner's properties, and she just learned about them. She is dis-

abled with heart-failure and complications, affected by heat and cold,requires oxygen and must pay to stay in warm climate in winter.She needs her money and property.

On March 8, 1989, Mr. A. B. Neil, clerk of Tennessee Supreme Court stated in letter to the Petitioner "there is nothing further to appeal in this case in any of the appellate courts of Tennessee(App. A p. 1).

On August 15, 1984, Rule 5(a) Tennessee Rules of Civil Procedure was amended to delete the requirement hat copy of notice of appeal be filed with the Clerk,which conflicts with right of appeal Rule 3 TRAP(App. B p. 12).

On November 7, 1985, state judge denied Motion to Forward Records to court of Appeals in 10647, which Petitioner believes allows for discrimination agains sex, race and non-resident (App. C p. 25 & B p.19).

Petitioner has tried to appeal what she believes state judge bias for residents and pre judice against non-resident property owner.She

submitted motion to rescue as she believed state judge prejudiced in 10647 Circuit Court, and 1974 in Chancery Court. State Judge denied all motions, and motion for reconsideration on merit, but these denied in February 1988(App. C p.20. 21).

Both motions were denied Applications for Permission to Appeal in the court of Appeals and Supreme Court(App.A p. 4,5,6,7,8).

Petitioner's believed lawyer's kept seting her up to come to cold climate while too ill to Chancery court. With motion for a continuance she submitted injunction against sale of property to the Honorable James Weatherford, but the Honorable Jim Hamilton denied on September 6, 1989(App.C p.20).

Petitioner's Application for Permission to Appeal was denied January 23, 1989, and Petition for Rehear denied on February 15, 1989.

Petitioner does not have any knowledge or expertise in the legal profession, but assumed her own defense after she became convinced that

third attorney retained was not representing her best interest, and trying to help sell her property, Thomas Stack, Henry Henry & Stack.

Petitioner learned from Tennessee law that self defense is allowed, but party is prohibited and warned against getting hurt.Her property had already been ordered sold without any compensation for seven year investment, and she was ordered pay all costs plus attorney fees (App. C p. 26).

On July 29, 1983, state judge verbally ordered property sold at a hearing while jury on on trial in Maury,other than Lawrence County where property lies and complaint filed; against state law;(2) Plaintiff Wilma Lesnansky signed complaint, but did not testify; Alex Polyak witness to settlement by agreement was sent from room and not called to testify; Roger Lesnansky witness to agreement and division went to Florida; and Petitioner was acutely ill as a result of exposure to 102 degree heat-wave and nation wide warning to heart.

On August 22, 1983, Petitioner went to Tennessee to check property when Thomas Stack would not answer letters of telephone calls, to see if property sold and confront lawyer.

On October 19, 1983, lawyer signed order to sell prepared by Boston Bates & Holt,after promising he would not sign without compensation to Petitioner objected to state judge at his office Mt. Pleasant, Tennessee.

On November 14, 1983, Petitioner entered notice of appeal in Court of Appeals(prior to amendment Rule 5(a)TRAP).But lawyer promised if she withdrew appeal, he would motion for new trial she had demanded after July 29, 1989.

On December 19, 1983,Petietioner assumed defense when lawyer refused to enter bills for restoration on house ordered sold on property.

On December 2 , 1989,Petitioner was ill bronchitis and heart when physician advised to go to warm climate, but state judge disregarded motion for continuance,physicians statement, and her husband and son brought her in back of

car on pillows one thousand(1000) miles to lawrenceburg to try to protect her property.

Petitioner did not expect, was not prepared,and ill, and after raising constitution, to state judge on December 19, 1983, she again raised constitutional question of unfair, unjust hearing, in state judge denial of due process and privation of civil and constitional laws and property rights in 10647 on December 26, 1984(App. C p. 37).

Appeal as a right Rule 3 TRAP, was lost when state judge denied motion to froward reords to the Court of Appeals,after Rule 5(a) TRAP amended, and Court of Appeals denied mtoion to call records. Petitioner sought federal protection but his has been denied.

On December 26, 1984, Petitioner found what appeared to be her objections to denial of order to sell property on Nonsuits No. 10611, Earlene polyak v William Boston Boston Bates & Holt, and No.10612 Earlene Polyak v Thomas Stack Henry Henry & Stack in Circuit

Court Court case files on Chancery 1974(App. C p.22 & 23).

On April 26 1984, the Court of Appeals (before Rule 5(a) deleted) dismissed appeal in 1974 dismissed appeal on UNAPPEALABLE JUDGMENT Petitioner instructed to appeal decision on hearing on December 19, 1983, by state judge prepared by Boston Bates & Holt. On December 20, 1989, UNAPPEALABLE JUDGMENT prepared by Boston Bates & Holt signed by Charles Holt and Jim Hamilton(App. C p. 24 & p. 34).

After Thomas stack did not enter bills, real eatate evaluation, memorandum brie, or arrange transcript of proceedings. Hand-drawn map form realestate alleged to divide(property divided 1976) property for Henry Henry & Stack, correlates in Tract #2, in order to sell Item #2, proving property could not be divided by Boston Bates & Holt(App. C p.29).

A comparison of Order October 19, 1983, App. p. 27, iten # 2, and map p.App. p. 29, is evidence of correlation with order Tract#3.

1. THE SUPREME COURT DENIED CONSTITUTIONAL RIGHT OF EQUAL PROTECTION OF PROPERTY RIGHT IN STATE STATUTE PARTITION IN KIND 29-27-117 TENNESSEE CODE ANNOTATED 1932

The Supreme Court denies constitutional right to be heard in right of equal protection of property right in denial for six years of all applications for permission to appeal. The Court denies due process in the deprivation of civil and constitutional laws and property rights in the Fourteenth, without jury trial in the Seventh Amendment.

Since the amendment of Rule 5(a) which deleted filing notice of appeal on August 15, 1984, Peitioner has tried to get relief from the sale of her property without any compensation in disregard of the Fifth Amendment in applications for permission to appeal.

Petitioner believes that this new evidence of sale and transfer of her property without notification by advertising one time in violation of laws governing state "Public Auction without notification of date time and amount

money without entering order of sale in the record of the Court fro right of appeal, right in equity, right of redemption and amount sold and where money invested.She has left address and telephone number at Court at all times Attachmentmust (21-1-03) publication must be in newspaper for four consective weeks,Tenn-Law Digest 1987 Edition.

This sale is invalid and illegal, but the Supreme Court sisregards equal protection of due process for non-resident property owner. She has not acknowledge these invalid debts "partial payment acknowledges debt(588 S.W. 2d 5422).

Petitioner made good and sure bond to secure appeal (29-6-132)personality must be exhausted before levy on real estate, Supra. ... discharge attachment of endorser by giving bond(29-6-105) Supra.

The alleged debt in 10647 has never been allowed right of appeal to Supreme court(Rule 5(a) TRAP, and the appeal was dismissed in 1974

for UNAPPEALABLE JUDGMENT and has been sold without jury trial or appeal ever being heard in any Court.No property levied upon ... will ... be sold before final judgment or degree(29 -26-104) Supra.

Petitioner has called both Chancery and Circuit Court since learning property sold on Robert Boston's invalid lein upon her "interest therein her property in second order for sale submitted to state judge on August 21, 1987.The Courts disregard Pro se and refuse to give information about amount of money. In partition proceedings...invested until claimed by them (cotenants) Supra.

Petitioner contends both initial order of sale by William Boston Bates & Holt, and second sale by William Boston's son, Robert Boston are invalid and property was divided by settlement supported in 1976., which is supported by Tennessee law, And that Buford Evans & Sons if property sold should be covered in fifteen hundred($1500.00) dollars, which he submitted

charges to Thomas Stack, who retained him without Petitioner's knowledge or permission and Mr. Evans &Sons sues her in wrongful lawsuit. Mr. Evans does not have surveyor's license in Tennessee, and according to federal law the cost of survey would be paid out of proceeds of sale of the property(59 L Ed

The hand-drawn map proves that this property already divided in settlement by agreement in 1976 supported by Partition in Kind 29-27-117, was used to prepare order of sale. Mr.Stack did not enter bills for restoration, memorandum brief evaluation of property or arrange transcript of the proceedings. Henry Henry & Stack cashed check for fifteen hundred ($1500.00) with letter stating" it is my undestanding, if we are not successful in Lawrenceburg, we will appeal to a higher Court"Mr. Stackwanted $1500.00 for research and to go against his friends in Lawrenceburg,"prior to taking case and promised jury trial, but no preparation for appeal or trial. and only hurried hearing in Columbia, Tennessee.

The hand-drawn map used to show property already settled in 1976, invalid and used to show property could not be divided, state judge signed over pro se objecions on Ocotber 19, 1983 after prepared by Boston Bates & Holt, signed William Boston and Thomas Stack.

The bias is further evidenced in Nonsuits 10611, and 10612, which grant both lawyers power to charge pro se any amount in execution. She was not present in Lawrenceburg on october 9, 1989, but Circuit Court demanded that she bring him a copy of the deed to additional forty (40) acres on October 10, 1983.

The Supreme Court of Tennessee tries to cover unconstitutional and federal grounds and defeat review of this Court without fair or substantial support(See denials in Appendix).

> A state court may not avoid deciding federal questions and thus defeat jurisdiciction of United States Supreme Court by putting forth non-federal grounds of decidion which are without any fair or substantial support. Wolfe v State of N. C. (1960)80 S ct1482 5 Led 80.

2. THE SUPREME COURT DENIES RIGHT TO BE HEARD IN NEW EVIDENCE OF SECOND SALE OF RIGHT IN PROPERTY IN EQUAL PROTECTION OF STATE STATE STATUTE PARTITION IN KIND

The property in 1974 has been ordered sold for the second time by state judge without notification to the Petitioner against State Statute Partition in Kind 29-27-117,and settle ment by agreement in 1976, and the Supreme Court denies equal protection of federal statute and the constitution in right to be heard.

Petitioner is denied equal protection in property right in the denial of due process and deprivation of these civil and constitutional rlaws and property rights.

Tennessee Statute Partition in Kind 29 29-117 T.C.A.

> If exact partition cannot be made the (Commissioners) they make the partitions as nearly equal as they can and charge the larger shares with the sums necessary to equalize all shares 1932.

This statute protects right in partition in kind and severalty and sale of other part of property by co-tenants.Petitioner has retire-

ment home on her agreed partition of property.

> The Court...may in accordance with the wishes of one of the cotenantsorder an allotment of shares...in kind and severalty, and direct the sale of other portion if it is not susceptable to partition in kind.Vandenburg v Molder, 4 Tenn. Civ. app. (Higgins) 111(1913).

Petitioner's right to partition in kind which as a result of 1976,she has restored house for retirement home and invested in her property, which has been ordered sold against equal protetection by state judge on order prepared without any compensation for improvements, first by family lawyer for seven(7) years after divided loyalty, then by his son Robert Boston is supported by case laws in many states.

"Courts in almost all states in such circumstances have granted "specific perfprmance" Hagerty vHagerty,Tenn, 172 259(1919)Courts have said taking possesion and making improvements "constitutes good consideration in equity" Lindell v Lindell, Min. 135 368 371(1910).

This property has been sold while Pro se

is still in possession and travel trailer sold for her "interest therin" her property in her yard.She finds recent Partition in Kind in 1975

> Parole partition of land followed by possession is binding and enforceable. Martin v Taylor, (1975) 521 S.W. 2d 582

And recent partition in kind in 1981, Watson v Pullman, 80-83 in Maury County, by the Honorable Robert Jones, entered on February 9, 1981 Min. Book 106 p. 478. This property is below Spring Hill, Tennessee.

Petitioner contends that she is denied federal protection in 42 U.S.C. 1982, ...right to inherit and hold property, and 1983, in denial of state judge to rescue and the Supreme Court denial of right to be heard in equal protection of constitutional right.And right to enforce contract in settlement by agreement protected by state statute partition in kind....

> ...due process placed upon the government the duty to give notice and be opportunity to be heard, binkeroff Faris & Savings Co. v Hill 281 673 678(1930) to individuals to individuals whose life, liberty, and property were adversly affected by gov-

nment action. The assurance of a fair hearing before a"neutral magistrate" who has no direct, personal substantive interest in reaching a conclusion against him in his case Tuny v Ohio,273 U S 523.

Petitioner contends that the Supreme denies federal protection of equal protection in due process and the deprivation of civil and constitutional laws and property rights.

Appellant's do not contend that state officials are immune from suits to restrain unconstitutional rights . The law clearly recognizes the right of an interested party to force state officials to acr in accordance with the constitution Jordan v Gilligan, 500 F. 26 701 6th Circuit 1974).

Petitioner contends that the second order to seel and confirmation of this sale is against Tennessee law that no property will be sold while action pending involving property. And including this action there are three actions pending involving this property in the federal courts against Buford Evans & Sons for wrongful lawsuit and against Thomas Stack,Henry henry Henry & Stack, and William Boston Boston Bates for negligence, which violates statute.

CONCLUSION

Petitioner prays that a writ out of this Court issue to review denial of equal protection of constitutional right to be heard under state statute, damages and that orders of state judge for the sale and confirmation of the sale of her properties be declared NULL AND VOID. And that the review of this case in the interest of seven(700) new General Motors employees going to this area is of imperative public importance.

On the 12th day of May, 1989.

Respectfully submitted,

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

Certificate of Service

I certify that a true copy of this lpeading has been mailed to the Honorable Michael cody, Attorney Genreal, Nashville, Tennessee 37219,and the Honorable Jim Hamilton Chancery and Circuit Courts, Lawrence County, Tennessee 38464.

_____
Earlene Polyak

STATE OF MICHIGAN
COUNTY OF WAYNE

_____ My commission expires;
NOTARY PUBLIC

APPENDIX A

SUPREME COURT
State of Tennessee
NASHVILLE 37219

A.B. NEIL, JR.
CLERK

March 8, 1989

Mrs. Earlene Polyak
4063 Hood Road
Palm Beach Gardens,Fl 33410

Re:Earlene Polyak
vs.
The Honorable Jim
Hamilton

Dear Mrs. Polyak:

This will acknowledge receipt of your Notice of Appeal in the above case.

Since there is nothing further to appeal in this case in any of the appellates courts of Tennessee, I must assume that your Notice of Appeal must be directed to the Supreme Court of the United States.

Very truly yours,
Signed by A.B. Neil Jr.

SUPREME COURT OF TENNESSEE

FILED
Feb. 28 1989
A.B.Neil,Clerk

RE:
EARLENE POLYAK

V
THE HONORABLE JIM HAMILTON

CASES: No 1974, FRANK HULEN AND WILMA LESNANSKY V EARLENE POLYAK IN CHANCERY.

Circuit No.10647 BUFORD EVANS & SONS V EARLENE POLYAK

NOTICE OF APPEAL

Earlene Polyak gives notice of appeal to denial of injunction against the sale of her properties on September 6, 1987,by Honorable Jim Hamilton, Chancery and Circuit Courts of Lawrence County, by the Court of Appeals and Supreme Court of Tennessee on February 15, 1989 to the Supreme Court of the United States.

The Supreme Court of Tennessee denies equal protection to pro se non-resident to Tennessee Statute, Partition in Kind 29-27-117.

She is denied equal protection in the denial of due process civil and constitutional laws and property rights in the sale of her properties without jury trial and holding order

of sale for appeal and right of redemption against Tennessee Laws. And 28 U.S.C. 1443: 42 U.S.C. 1627; 42 U.S.C. 1981,1982 & 1983; Fifth, Seventh, and Fourteenth Amendments.

On the 23rd day of February, 1989.

Signed Earlene Polyak
4063 Hood road
Palm Beach Gardens,
Florida 33410

Certificate of Service

I certify that a true copy of this pleading has been mailed to the Honorable Jim Hamilton, Lawrence County Chancery and Circuit Courts, Lawrenceburg, Tennessee 38464.

Signed Earlene Polyak

SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
FEB 15 1989
A.B. Neil Clerk

EARLENE POLYAK

Appellee,

v

Lawrence Chancery 1974

THE HONORABLE JIM HAMILTON

Lawrence Circuit 10647

ORDER DENYING PETITION TO REHEAR

Petitioner has filed a petition to rehear and application for permission to appeal which was denied on 23 January 1989.

This matter has long since been concluded (See order dated July, 1988). The application to appeal is not well taken and the petition rehear is denied.

Enter this 15th day of February, 1989

PER CURIUM

SUPREME COURT OF TENNESSEE
AT NASHVILLE

EARLENE POLYAK
Appellees

FILED JAN 23 1989

v

Lawrence County

THE HONORABLE JIM HAMILTON

ORDER

Upon consideration of the application for permission to appeal and the entire record in this cause, the Court is of the opinion that the application should be denied

PER CURIUM

SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED JUL 1 1988

A.B. Neil Clerk

Re:

EARLENE POLYAK

v

THE HONORABLE JIM HAMILTON

CASES:
CHANCERY NO: 1974,FRANK HULEN
AND WILMA LESNANSKY

v

CIRCUIT NO. 10647, BUFORD
EVANS & SOMS V EARLENE POLYAK

ORDER

Earlene Polyak has filed a pleading in this case styled"APPLICATION FOR EXTRAORDINARY APPEAL,CONFLICT OF INTEREST AND FAILURE TO RESCUE AND STAY SALE AT PUBLIC AUCTION FROM COURT OF APPEALS AND ORAL ARGUMENT."

The petition appears to be a T.R.A.P. 10 application for extraordinary appeal from order from the Court of appeals denying a similar application in that court from an order of the Chancery court of Lawrence County. The application makes reference to an order of the Court of Appeals dated May 4, 1988 and a petition

to rehear dated 24 May 1988. Only the order of May 4 1988 is included in the record before us.

That order refers inturn to a prior order of that court dated 2 Octobrer 1987 denying an "Application for Extraordinary appeals and Stay at Public Auction."

The petition filed indicates this litigation in progress since at least 1983 or 1984 There have been final orders entered in the Chancery Court of Lawrence County as well as the Circuit court of Lawrence County as well as in the Court of appeals. T.R.A.P. 10 specifically provides for extraordinary appeals... of interloctuory orders of a lower court."

the application for appeal in this case is not well taken and accordingly denied.

Enter this 1st day of July, 1988.

PER CURIAM

SUPREME COURT OF TENNESSEE

EARLENE POLYAK
Appellant

FILED SEPT 14 1988

v

Lawrence County No. 1974

THE HONORABLE JIM HAMILTON

Lawrence circuit No. 10647

ORDER

Under date of September 7 and September 9, 1988, there were filed in this Court motions on behalf of Appellant, Earlene Polyak.

Mrs. Polyak was advised by letter from Clerk of this Court on August 25, 1988, that there is nothing now pending in this Court concerning her case.Accordingly, the motions filed on September 7 and September 9 are dismissed at her cost.

Enter this 14 day of September 1988.

For the Court

Signed Willian J. Harbison C.J.

AFFIDAVIT

To whom it may concern:

My name is Mary Mitchell. I live at R#3, Box 63B, Lawrenceburg, Tennessee 38464.

On or about September thru Nov. 1987, I was reading my newspaper,the lawrence County Advocate, when a familiar name cought my eye. The name of the person was Earlene Polyak. Realizing I had met her on three occasions in the past,I read more, out of curosity. The contents of the articlerevealed the intent to sale of some property that sounded familiar to me. In some correspondance in which I last received from Earlene Polyak some years ago.She had revealed to me that she owned a mobile home situated on some property herein Lawrence County, Tennessee.Upon meeting her again some six motnhs after I read the articel,I casually mentioned it to her, at this time she informed that she knew nothing of this. This is all the knowledge I have of this situation.

Signed Mary Mitchell

COUNTY OF LAWRENCE
STATE OF TENNESSEE

Sworn and subscribed before me this 18th day of June, 1988.

My commission expires: 8/18/88

Signed Mabel Evelyn Hedgepath

Notary Public.

THE TENNESSEE
COURT OF THE JUDICIARY

Ms. Earlene Polyal January 3, 1985
3179 Middlefield Drive
Trenton, Michigan 48183

Dear Ms. Polyak:

I have received your letter of December 7, and December 24, 1984 and the enclosures concerinig your complaints against Judge Hamilton. After careful review of the material I have concluded that the Court of the Judiciaryshould not be involved in this case.We do not have any power to alter change or reverse Judge Hamilton's orders.

If you insist Judge Hamilton should rescue himself in any further proceedings in which you are involved, you should make a record in the Trial Court to form the basis of appeal if her refuses to do so.

Very Trule Yours,
Signed Ben Cantrell
Presiding Judge

APPENDIX B

COURT OF APPEALS
STATE OF TENNESSEE
NASHVILLE 37219

September 9, 1985

Dear Counsel:

Re: BUFORD EVANS V EARLENE POLYAK

We are returning herewith the copy of the Notice of Appeal forwarded to this office in the above case.

An amendment to Rule 5(a) of the Tennessee Rules of Appellate Procedure effective August 15, 1984, deleted the requirement that a copy of the Notice of Appeal be filed with the Clerk of the Appellate Court.

Signed Ramsey Leathers
Ramsey Leathers, Clerk

COURT OF APPEALS, TENNESSEE

EARLENE POLYAK FILED NOV 4 1988

V

THE HONORABLE JIM HAMILTON

ORDER

Earlene Polyak has filed a "Petition for Rehear Application for Extraordinary Appeal Conflict of Interest and Failure to Rescue and Stay Sale of Properties" which document has been considered, found to be without merit and denied at the cost of said petitioner which execution may issue.

Enter Nov 4 1988

Signed Judges.

Henry F. Todd

Samuel L. Lewis

Ben Cantrell

COURT OF APPEALS OF TENNESSEE

Re:
EARLENI POLYAK FILED)CT 17 1988
vs
THE HONORABLE JIM HAMILTON
CHANCERY NO. 1974, FRANK HULEN AND
WILMA LESNANSKY V EARLENE POLYAK

CIRCUIT NO. 10647 BUFORD EVANS & SONS
V EARLENE POLYAK

MOTION TO FILE APPLICATION

Applicant moves that this Court of appeals file Application for Permission to appeal the conflict of interest and failure to rescue from all of cases regarding real and personal properties by the Honorable Jim Hamilton. She contends that all orders and motions regarding her properties by Judge Hamilton be declared NULL AND VOID.

Applicant moves her personal check for five hundred ($500.00) be held for bond required in Rule No. 7 Court of appeals.

On the 3rd day of October 1988.

Signed Earlene Polyak(313) 676-3364
Trenton, Michigan 48183

COURT OF APPEALS, TENNESSEE
MIDDLE SECTION AT NASHVILLE

RE: FILED 5 24 88

EARLENE POLYAK

VS

THE HONORABLE JIM HAMILTON

CASES:

CHANCERY NO. 1974, FRANK HULEN AND WILMA LESNANSKY V EARLENE POLYAK

CIRCUIT NO. 10647,BUFORD EVANS & sons v EARLENE POLYAK

ORDER

A petition for Rehear Application for Extraordinary Appeal Conflict of Interest and Failure to Rescue filed under the above caption has been examined, found to be without merit and is denied at the cost of Earlene Polyak for which execution will issue.

Enter 5-24-88

Signed Henry Todd
Samuel L. Lewis
William C. Kotch

MIDDLE SECTION AT NASHVILLE

FILED
MAY 4 1988

Re:
EARLENE POLYAK
VS.
THE HONORABLE JIM HAMILTON
CASES:
CHANCERY NO. 1974,FRANK HULEN AND WILMA LESNANSKY V EARLENE POLYAK

CIRCUIT NO. 10647, BUFORD EVANS V EARLENE POLYAK

ORDER

On May 2, 1988, an Application for Stay at"Public Auction" was filed under the above caption. Said application does not specify the order of judgment as to which stay is desired, but it stated that:

> Application for stay of sale of appellant properties was denied on Octobeer 2, 1987, in this Court.

It appears that, on October 2, 1987, this Court entered an order denying"Application for extraordinary appeal and stay sale at public auction."

Upon due consideration of the application filed on May 2, 1988, same is denied.

ENTER MAY 4 1988 ,Signed by three Judges.

COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

FILED
OCT 2 1987
A.B. Neil Clerk

FRANK HULEN AND
WILMA LESNANSKY
Plsintiffs
vs
EARLENE POLYAK

ORDER

The application of Earlene Polyak in this Court under the above caption on September 22, 1987, has been considered and is hereby denied at cost of said applicant.

Enter OCT 2 1987

Signed Henry Todd

Ben Cantrell

William C Koch Jr.

COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

BUFORD EVANS & SONS FILED 10-28-85

10647

V Lawrence Law

EARLENE POLYAK

ORDER

A petition has been received from the captioned defendant praying that this Court demand a record from the Trial Court

Such petition being unknown to the practice of this Court, it is ordered that it be denied without prejudice to any application for the Trial Court for the same relief.

Costs of this proceeding taxed against Petitioner

ENTER 10-28-85

Signed Judges Henry Todd
Samuel Lewis
William c.Koch

COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

BUFORD EVANS FILED MAY 3 1985

V

EARLENE POLYAK

ORDER

The defendant has filed with this Court an application for extraordinary appeal.Said application complains of various actions of the Trial Judge during trial, but does not designate describe or exhibit a copy of any order of judgment of Trial Judge.

There is no showing of why an appeal as of right or permission is not availabele to applicant.

It ia therefore ordered that said application for appeal be denied.

ENTER May 3 1985

Signed Judges Henry F. Todd
Samuel Lewis
Ben Cantrell
William c Koch

APPENDIX C

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN AND
WILMA LESNANSKY

DENIED SEPT 6 1988
signed Jim Hamilton

V

No.1974

JUDGE WEATHERS

EARLENE POLYAK

MOTION FOR INJUNCTION

Defendant moves for injunction against the sale of her property including "interest therein" travel trailer and Automobile in Lawrence county. She made bond for appeal of this case with two five hundred($500.00) total ($1000.00) in November 1983, and January 1984, in the Chancery Court.Theclerk alleges these are not on file, but there is a zerox copy in the Technical Transcript submitted to the Court of Appeals in Nashville(viewed May 31, 1988)

On the 2nd day of September 1988.

Signed Earlene Polyak (313) 676-3364
3179 Middlefield Dr.Trenton, Mi.

I certify that a true copy of this pleading has been mailed to robert boston, Nashville Tennessee 3729. Signed Earlene Polyak

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN AND
WILMA LESNANSKY

FILED FEB 9 1988

V

NO. 1974

EARLENE POLYAK

ORDER

This case came on to be heard and was heard on the 9th day of February 1988 Motion of the Defendant for the Court to rescue. It appeared to the Court that said motion has no merit and should be dismissed.

IT IS THEREFORE, ORDERED by the Court that the Motion filed by the Defendant be dismissed and cost of same be adjudicated to the Defendant.

This 9th day of February, 1988.

Signed jim Hamilton

CITCUIT COURT OF LAWRENCE COUNTY. TENNESSEE

EARLENE POLYAK (Earlene Poluyak did not Sign this order).

v No. 10612

THOMAS STACK AND
HENRY HENRY & STACK

ORDER

This cause came on to be heard and was heard on the 9th day of october, 1984, before the Honorable Jim Hamilton, Circuit Judge on motion of the plaintiff for this court to en- the sale of certain Real estate, which was re- cently ordered sold for partition suit which which was heard in the Chancery Court.

The Chancery Court heard proof,ordered real estate soldfor partition. the plaintiff appealed this decision to the Court of Civil Appeals where the decision upheld.

It is there fore ordered,that the motion to enjoin the sale of this real estate is dis missed and cost adjudicated to defendant for execution if necessary.

Signed Jim T. Hamilton

APPROVED FOR ENTRY:

Thomas Stack

Earlene Polyak

CIRCUIT COURT OF LAWRENCE COUNTY, TENNESSEE

EARLENE POLYAK (Earlene Polyak did not sign order).

V No. 10611

WILLIAM BOSTON AND
BOSTON BATES & HOLT

ORDER

This cause came on to be hear and was heard on the 9th day of October, 1984,before the Honorable Jim t. Hamilton Judge on motion of Plaintiff for this court to enjoin sale of certain real estate, which was recently ordered sold for partition suit which was heard in the Chancery court.

The chancery court heard proof, ordered real estate sold for partition. the plaintiff appealed decision to the Court of Civil Appeals where decision was upheld.

It is therefore ordered , that th motion to enjoin sale of this real estate is dismissed and cost adjudicated to defendant for execution if necessary. Signed Jim T. Hamilton

APPROVED FOR ENTRY:

William Boston

Earlene Polyak

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN ET AL
Plaintiff

FILED DEC 19 1983

v

No. 1974

EARLENE POLYAK
Defendant

JUDGMENT

This cause came on to be heard on this the 19 day of December 19, 1983, before the Honorable Jim T. Hamilton, Judge upon the motion this day filed by Defendant, personaly on her own behalf, state and argumentof the Defendant personally from all which the Court finds there to be no merit, and said motion is here and now overruled.

This 19th day of December, 1983.

Signed Jim T. Hamilton

CERTIFICATE OF SRVICE

The undersigned certifiesthat a true copy of this pleading addressed to said counsel at his office .

Signed Charles Holt
Boston Bates & Holt

CIRCUIT COURT OF LAWRENCE COUNTY,TENNESSEE

BUFORD EVANS & SONS FILED NOV 12 1985

vs CIVIL ACTION NO: 10647

EARLENE POLYAK

ORDER

This case came on to be heard and was heard before the Honorable Jim Hamilton, on the plaintiffs Motion to Forward records of this case from the Circuit court of Lawrence County, Tennessee to the Court of Civil Appeals.

IT IS ORDERED by the Court that Plaintiff's Motion be denied.

This 7th day of November, 1985.

Signed Jim Hamilton

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN, ET AL
Plaintiffs

FILLED OCT 19 1983

v

CIVIL ACTION NO. 1974

EARLENE POLYAK
Defendant

ORDER

This cause came on to be heard this the 29th day of July 1983, before the Honorable Jim T. Hamilton, Judge, Part II of the Circuit and Chancery Court in Lawrence County, Tennessee. While holding Chancery Court for Lawrence County, Tennessee, upon complaint hereto filed in this cause, the Answer therto, the testimony of witness in open Court, and the entire record in this cause, whereas at the conclusion of which defendant's attorneys were granted the privilege of presenting a brief to the Court within a reasonable time, after the conclusion of which the Court found in memo dated August 11, 1983, the following:

1. That the property in question consists of approximately 40 acres, which belonged to the parties mother.

2. That the property cannot be partitioned in kind as there are three distinctly different types of property within the 40 acres. One portion of the property includes the home place, well and barn, another portion contains woods and is a low lying wet area, and the remaining portion consists of level flat land which is suitable for raising crops.

3. The Court finds there is no way to divide this land equally between these heirs, without selling said property and dividing the proceeds.

4. The proceeds of this sale after payment of all expenses incident to sale, including attorney fees will be divided equally between the heirs, except that the cost of this case shall be deducted from the defendant's share of said proceeds.

5. This sale shall be conducted by Eulan Hooper unless the parties agree on another real estate company.

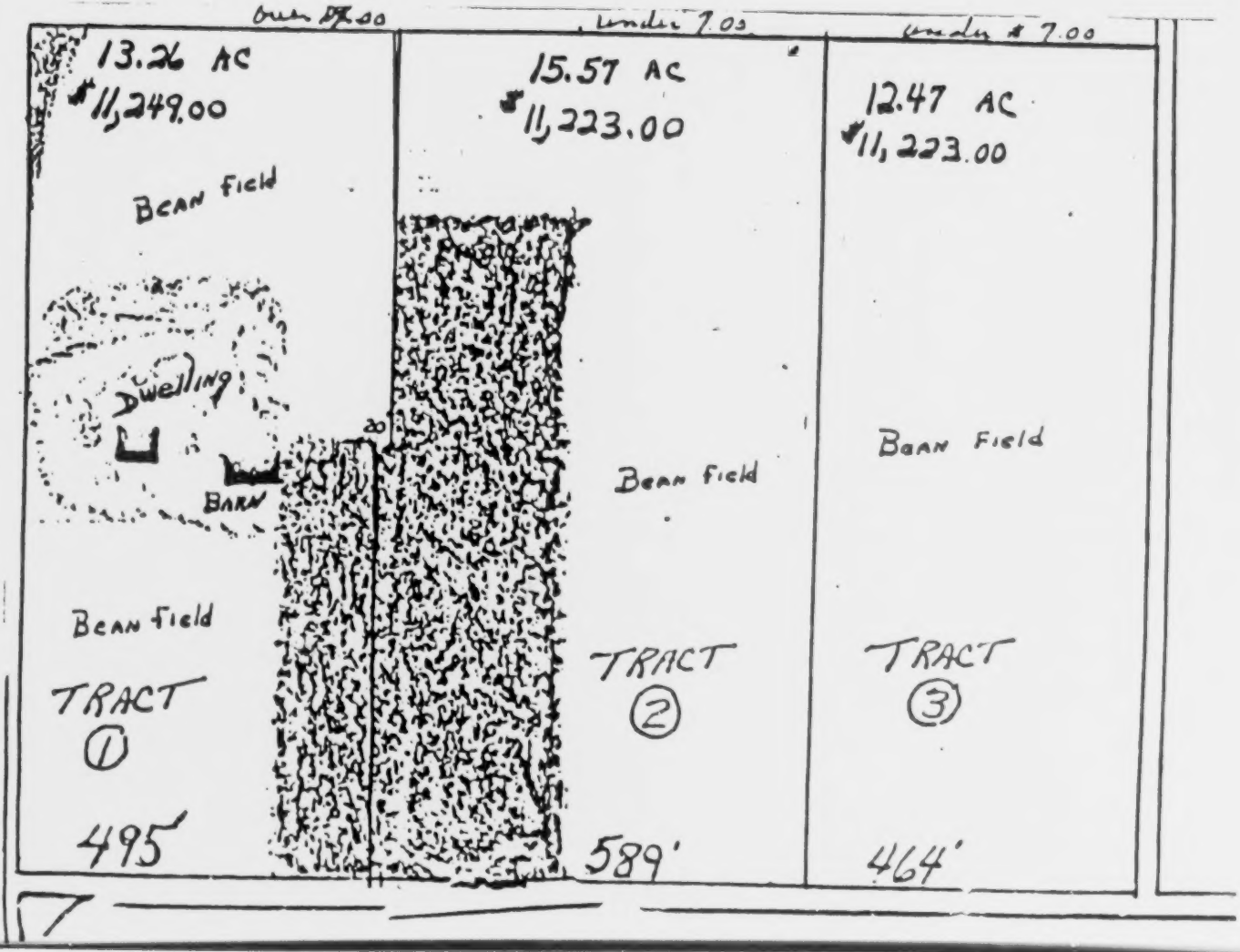
All of which is therefore, ORDERED AND DECREED by the Court.

This the 19th day of October, 1983.

Signed Jim T. Hamilton
Jim T. Hamilton, Circuit

APPROVED FOR ENTRY:
BOSTSON BATES & HOLT

Signed William Boston
Attorney for PLAINTIFF
Signed Thomas Stack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464'

CHANCERY COURT OF LAWRENCE COUNTY, TENNESSEE

FRANK HULEN AND
WILMA LESNANSKY
Plaintiffs

Civil Action No. 1974

v

EARLENE POLYAK
Defendant

ORDER

Upon motion of Plaintiffs to sell that certain parcel of land formerly at issue in this lawsuit, said sale having previously been ordered by this Court and said Court having been affirmed through all stages of the Appellate process, it is hereby ordered as follows:

1. Col. Eulan Hooper is hereby authorized and directed to advertise, on behalf of the parties herein, the sale of land in Exhibit 1 hereto under the following terms and conditions of this order:

Mr. Hooper will advertise said sale in a newspaper of general circulation in Lawrence County Advocate said sale to be conducted at

public auction pursuant to this order on a Saturday at 10:00 a.m., said date to be determined by Mr. Hooper and set out in the advertisements, and not to be less than 21 days following the entry of this order. Said advertisement shall be run in no less that three separate issues of said newspaper prior to the date of such sale. Said sale shall be conducted in a manner consistent with normal and usual practice for auction sales held in Lawrence County, Tennessee and the land shall be sold to the highest best bidder for case, 10% of payment to be delivered on the date of sale and held by Mr. Hooper in trust for deposit into the registry of the Court on the following Monday. The remainder shall be due by 12:00 noon on aforesaid "following Monday payable to the Lawrence County Clerk and Master's office, who shall in turn deposit into the Court's registry.

2. Upon deposit of said funds into registry of this Court, the Clerk and Master is directed and authorized to prepare an

appropriate deed conveying title to the property as ordered herein to the purchaser of said land at auction, or his or her designee or assign. Said deed shall divest all parties hereto of all right, title and interest in and to said land pursuant to this and previous orders of this Court.

3. Upon delivery of the above-referenced deed, and payment of the purchase price for the land into the registry of this Court, the Clerk and Master shall divide the net proceeds equally among the parties hereto, after having paid Eulan Hooper a fee for his services in connection with said auction as ordered herein in the amount of 6% of the gross amount received at said auction, plus reimbursements for any reasonable costs incurred in conducting said auction sale. In addition, the Clerk and Master shall be paid a fee for her services as set out herein in the amount of $250.00, and shall pay from defendant's portion of the proceeds, all Court

costs incurred since this case initially filed. Thereafter, the Clerk and Master shall pay to parties hereto the net amount due each party pursuant to the Court's partition, subject, however, to payment by the Clerk and Master all debts of all creditors of record of any party who have a lein against any interest in said land as a result of leins against party's interest therein. Such leins of record shall attach to the proceeds of the land the same as same attached to the actual land.

4. All other matters are reserved pending further of the Court.

So ordered this _____ day of September, 1987.

Hon. Jim T. Hamilton, Circuit

APPROVED FOR ENTRY:

Signed Robert Boston
Attorney for Plaintiffs

Lein placed by Robert Boston on December 12, 1984 NOTE BOOK 19, p. 270, Lein Book 7, pp. 497-499 by Geneva Frisbee. This lein for

undisclosed amount. Lein placed by Robert Boston, January 22, 1985, Note Book 19, p. 280, Lein Book 7, p. 542 for $1,112.76.

Mr. Boston's cost and attorney fees were corrected in Court of Appeals to $850.01. Mr. Boston did not serve Appellant with a copy of costs for objections. Costs presented in District Court composed mostly of long distance telephone calls to this father, William Boston.

IN THE COURT OF APPEALS OF TENNESSEE

FRANK HULEN AND WILMA LESNANSKY
Plaintiff-Appellees

ENTERED APRIL26 1984

Lawrence Equity

v

EARLENE POLYAK
Defendant-Appellant

ORDER

On March 20, 1984, an order was entered by this Court granting a rehearing in respect to the order entered on March 2, 1984, dismissing appeal for failure to timely file a

Notice of Appeal with the Trial Clerk; the parties have filed briefs for rehearing;

And it appearing from the record that Appellant's Motion to Alter or Amend was heard on December 19, 1983 that on January 3, 1984, Appellant filed a Notice of Appeal from the final judgment entered on December 20, 1983, but that the order overruling Appellant's Motion to Alter or Amend was not entered until January 10, 1984;

And it further appearing that this situation is governed by TRAP Rules 4(b) and 21(b) which read as follows:

> Rule 4(b) Termination by Specified timely motion in civil actions--in civil action if a timely motion under TRCP is filed in the trial court by any party: (1) under Rule 50.02 for judgment in accordance with a motion for a directed verdict; (2) under Rule 52.02 to amend or make additional findings of fact; (3) under Rule 59.03 to alter or amend judgment; or, (4) under Rule 59.01 for a new trial, the time for appeals for all parties shall run from the entry of the order denying a new trial or granting or denying any such motion. A Notice of Appeal filed before the filing or disposition of any of the above motions shall have no effect. The party making the motion after Notice of Appeals is filed shall move in trial court for an

order dismissing appeal. A copy of the order of dismissal by the trial court shall be filed by the moving party with the Clerk of the Appellate Court. A new Notice of Appeal must be filed within the prescribed time measured from the order disposing of motion as provided above.

Rule 21(b) Extension of time--For good cause shown the Appellate Court may enlarge the time prescribed by these rules or by its order for doing any act, or may permit any act to be done after the expiration of such time; but the court may not enlarge the time for filing a Notice of Appeal prescriber in Rule 4, and application for permission for appeal prescribed in Rule 11, or a Petition for Review prescribed in Rule 12.

And it further appearing from that judgment from which appeal is sought is not a final judgment appealable as a right under TRAP Rule 3...

It is therefore ordered that this appeal be and is hereby dismissed at the cost to the Appellant...

ENTERED April 26, 1984

Signed
Judge Henry F. Todd
Judge Samuel L. Lewis
Judge Ben H. Cantrell
Judge Lewis H. Conner

IN THE CHANCERY COURT
FOR
LAWRENCE COUNTY, TENNESSEE

FRANK HULEN AND
WILMA LESNANSKY
Plaintiffs

(Henry Henry & Stack sub- to State Judge but was not entered on AUG 5 1983

v

No. 1974

EARLENE POLYAK

MEMORANDUM BRIEF

On July 29, 1983, a hearing was held in above styled cause before the Honorable Jim T. Hamilton, at Columbia, Tennessee.

The issue: in the case raised by the parties pleadings were:

(1) Whether the subjected property can be partitioned in kindor, in the alternatively, whether it is manifestly to the advantage of the parties that it be sold for partieion or so situated that it is not feasable or practical to divide in kind.

(2) Whether there has been a parole partition of this property in kind in reliance up on which Defendant has made imporvements on the house situated on subject property.

This action is governed partly by the provision of TCA 29-27-201 et seq. It is also governed by a body of case law,pertient portions cited herein.

PARTITION IN KIND FAVORED OVER SALE FOR PARTITION.

The party insisting on a sale must show clearly by the facts that neccessity for such saleand nothing short of the clearest and most satisfactory proof could justify the Court in ordering a sale against the protest of one(1) of the tenants in common. Reeves v Reeves, 58 Tenn 669,Vandenburg v Molder,4 Tenn. Civ. App. (4 Higgins)III.

Parition in kind at common law was a of absolute right, Sale may not be ordered without good cause shown. the applicant for sale must show the existance of such a state of facts for sale, under statute, will be sufficient to rebut the presumption of lawthat each of the parties is entitled to an actual partition, The onus is always on he who seeks sale. Bevins v George,255 S.W. 24 409.

BURDEN OF PROOF

The burden of proof where partition for sale clearily rests heavely on the party.

The mere opinion of a witness without facts sustaining it that property cannot be parttioned and must be sold is insufficient based on thereon will "utterly void." Davidson v Bowden 37 Tenn.129;Ross v Ramsey,40 Tenn 15.

Again, nothing short of the clearest and most satisfactory proof could justify ordering sale against the protest of one(1) of the tenants in common. Reeves vReeves, 58 Tenn. 669;Vandenburg v Molder supra: Glen v Gresham 602, S.W. 2d 256.

PARTITION IN KIND IS A SEPARATION BETWEEN OWNER

It is not a conveyance and, therefore,not governed by statute of frauds. An agreement for partition between co-tenants may be proved parole evidence. Fisher v Loague,3 Tenn (Shannon)123;Meachum v Meachum,19 S.W. 757 91,Tenn532.McBroom v Whitefield,108 Tenn.422 McCaultyv Peoples,4 Tenn App. 488.

Where tenant in common at his own expense puts improvements on common property,and after wards partition is made,such improvements should be alloted to the share of the party making the improvements, and without any charge for their value. Polk v Gunther,107, Tenn. 16;Broyles v Waddell,58 Tenn 32.

The cost of the improvements can be allowed to sucn co-tenant; that co-tenant is not merely limited to the amount by which those improvements have increased the property. Wilburn v Kingsly, 3 Tenn.App.88.

If exact partition cannot be made without material injury to the parties, or some one of them (the commissioners), make make partition as nearly equal as they can and charge the larger shares with the sums neccessary to equalize all shares, and report the facts. TCA 29-27-549, Hardin v Cogwell, 52 Tenn.549 Burdett v Norwood,Tenn 491

COURT HAS GENERAL AND EQUITABLE POWERS

A Court of equity in a partition case

does not act merely in a ministral capacity, butfounds itself on general principles of equity according to its own notion of equal justice and equity between rights of the parties interested. Sproles v Gre?96 S.W. @d

PROOF IN CASE

No summary will be made of the proof adducted at the trial. The Court gas its own notes and records of what was established by both sides at this hearing. Defendant will rely upon these facts and the applicationof the above cited law thereto.

Respectfully submitted,

Signed Thomas Stack
Attorney for the Defense
Earlene Polyak